

**REMARKS**

Claims 66-82 and 173-183 were examined in a subject Office action dated 19 September 2008 and all rejected. In response thereto, claims 66, 174-183 have been amended, claim 173 canceled, claims 184-185 have been added, and claims 67-82 remain currently pending in the subject application under active prosecution, as shown on pp. 2-7 of the Reply. Applicants assert that the amendments are supported by the originally filed Specification and do not introduce new subject matter.

The novel aspects were conveyed by telephone and facsimile to the Examiner on October 10, 2008. Applicants appreciate the consideration given to this remarks, which are herein incorporated in their entirety in this Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

As a preliminary matter, a terminal disclaimer is entered herewith to overcome a nonstatutory obvious-type double patenting rejection with regard to Appln. Nos. 09/894,615, 09/894,641, 09/724,949, 11/567,695, 11/559,854, 11/622,954, 09/878,948, 12/049,898, and 09/879,339.

**I. Rejection of Claims 66-82 Under 35 U.S.C. §103(a)**

Claims 66-82 and 173-183 stand rejected under 35 U.S.C. §102(e) as being anticipated by Carroll, *et al.* (US Patent No. 6,285,757) in view of Toyouchi et al (US Patent No. 6,006,251). It is respectfully submitted that this rejection should be withdrawn for at least the following reasons. The combination of Carroll and Toyouchi fails to teach all of the claim limitations.

“Under 35 U.S.C. 103 where the examiner has relied on the teachings of several references, the test is whether or not the references viewed individually and collectively would have suggested the claimed invention to the person possessing ordinary skill in the art. It is to be noted, however, that citing references which merely indicated that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have

been obvious. That is to say, there should be something in the prior art or a convincing line of reasoning in the answer suggesting the desirability of combining the references in such a manner as to arrive at the claimed invention... [I]t would not have been obvious to modify [the prior art] ... without using [the patent application's] claims as a guide. It is to be noted that simplicity and hindsight are not proper criteria for resolving the issue of obviousness.” Ex parte Hiyamizu, 10 USPQ2d 1393 (BPAI 1988).

Turning to independent claim 66, the claim as amended recites an additional feature of claim 173, the latter thus having been canceled, and is further amended to clarify that the user condition is a *transient physiological* user condition. In particular, claim 66 now recites in part automatically modeling values of other state attributes based at least in part on the sent values of the state attributes by abstracting a transient physiological user condition derived from the sent values of the state attributes of a lower level of abstraction. Support for this amendment is given in at least on page 13, lines 15-28.

In rejecting the previously presented claim 66, the Examiner acknowledged that “Carrol fails to explicitly teach automatically modeling values of other state attributes based at least in part on the sent values of the state attributes by abstracting a user condition derived from the sent values of the state attributes.” The Examiner looked to Toyouchi at FIG. 4 and Col. 11, line 55 to Col. 12, line 10 for this teaching. In rejecting the additional subject matter of claim 173, the Examiner relied upon the teaching of Toyouchi at Col. 8, line 61 to Col. 9, line 35.

It is asserted, however, Toyouchi fails to teach or suggest deriving a higher level abstraction as to the user’s transient, physiological condition. Preceding the second cited excerpt, Toyouchi makes clear that a “condition during reception corresponds to an item **having no relationship to the end user** among items determined when the request of the end user is received from the information acquiring computers”. (See Col. 8, lines 47-50.) Thus, the recitation of conditions that follows at FIG. 4 and Col. 11, line 55 to Col. 12, line 10 encompass a number of objective, external factors and not an abstraction of transient, physiological user conditions. The first cited excerpt is merely an example of a

data structure (i.e., table) for storing such objective, external conditions (e.g., log-in time).

New claims 174 and 174 are supported as well by the disclosure at page 13, lines 15-28.

Consequently, reconsideration and allowance of claim 66 is respectfully requested, as well as for claims 67-82 and 174-185 that depend there from.

### **CONCLUSION**

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063[MSFTP1899USD].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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